Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1996

FRED DAVIS,

Petitioner,

v.

HANOVER INSURANCE COMPANY, ET AL

Respondent.

Petition For Writ Of Certiorari
To The Massachusetts Supreme Court

PETITION FOR WRIT OF CERTIORARI

FRED DAVIS
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25 pp

ISSUES PRESENTED

I.

Should this court grant certiorari to resolve the issues of breach of contract and other related issues which resulted when petitioner was entraped to sign a release to be paid the sum of $20,000.00 (twenty thousand) dollars for permanent partial disability injuries caused by the respondent's insured. Respondent is holding the release signed by the petitioner and never paid the petitioner.

II.

Massachusetts Law of Crimes Against the Elderly and Disabled involving larceny of $250. (two hundred & fifty) dollars is punishable by both fines and jail sentences

III.

Amendment XIV All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any state

deprive any person of life, liberty or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws.

IV.

Was the granting of a Summary Judgment to the respondents appropriate based on the facts and evidence presented to the lower court.

V.

The public interest is involved.

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Petitioner, Fred Davis, respectfully prays that a writ of certiorari issue to review decision of the Massachusetts Supreme Court and grant the order that the petitioner be paid the sum of $20,000.00 (twenty thousand) dollars plus interest, legal fees, court cost, enforcement of the Massachusetts Law Crimes Against the Elderly and Disabled and triple damages, or as an alternative remand action to the Court for trial by jury and any other relief the Court deems appropriate.

OPINIONS BELOW

The lower Court's ruling was for the respondent and is attached Appendix D.

The Massachusetts Supreme Court's decision for Further Appellate Review was denied and is attached Appendix E.

JURISDICTION

July 24, 1996, the Massachusetts Supreme Court denied Further Appellate Review. This petition is filed within the 90 days of the Massachusetts Supreme Court's decision denying Further Appellate Review.

This Court's jurisdiction is invoked under 28 United States Code.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteen Amendment to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property without due process of law: nor deny to any person within its jurisdiction the equal protection of

of the laws.

STATEMENT OF THE CASE

The petitioner Fred Davis, is a senior citizen.

February 11, 1987, Anthony Lauria (Hanover Insurance Company is Lauria's automobile Insurance carrier) negligently operated a motor vehicle causing a motor vehicle accident.

As a result of this accident,the petitioner received severe bodily injuries resulting in partial permanent disability.

Since the accident, up to and including the present petitioner has been under the care of a physician.

In addition, petitioner has lost approximately $50,000.00 (fifty thousand) dollars in wages and excessive damage to his motor vehicle.

Petitioner engaged the legal service of Robert T. Abrams paying him a fee of $1,000.00 (one thousand) dollars.

August 29, 1991, the petitioner received

from attorney Abrams a release in the amount of $20,000.00 along with a note in which the petitioner should sign and return to him, and is attached Appendix A.

Petitioner was informed by attorney Abrams that he received a letter dated September 12, 1991, from Mark F. Mahnken of the law firm of Driscoll, Gillespie & Stanton located at 200 Broadway, Lynnfield,Massachusetts indicating that he wanted the name of Hanover Insurance on the release, and is attached Appendix B.

September 20, 1991, petitioner complied with the request and Hanover Insurance Company name appeared on the release, and is attached Appendix C.

After petitioner signed the release, fraud, unfair, deceptive business practices and Crimes against the Elderly and Disabled was used and the respondents refused to pay the petitioner.

March 10, 1993, petitioner files his Complaint for breach of contract and jury claim in the Norfolk Superior Court in Dedham, Massachusetts.

September 24, 1993, respondents filed a Motion For Summary Judgment.

Petitioner filed a timely objection to the Summary Judgment.

Respondent' Summary Judgment is allowed.

The petitioner appeals the lower Court's decision. Now the issue is before the Court.

REASONS FOR GRANTING THE PETITION

I. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONER FROM FRAUD, UNFAIR AND DECEPTIVE BUSINESS PRACTICES

September 20, 1991, Petitioner signed a release in which payment was to be made in 30 days, and is attached Appendix C.

Respondents accepted the petitioner's signed release and refused to pay him. Respondents since September 20, 1991, up to and including to this date are holding the petitioner's signed release in their possession. United States v. Windstar 64 United States Law Weekly page 4739 "a contract is a contract". Massachusetts General Laws c176D § 3 (9)(f) inserted by St. 1972, c 543, § 1, provides that it is an unfair claim settlement practice for an insurer to fail "to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonable clear". Massachusetts General Laws c. 93A. § (1) covers such insurance practices in its prohib-

ition of "unfair or deceptive acts or practices in the conduct of any trade or commerce". Dodd v Commercial Union Insurance Company 373 Mass. at 78, "and provides for recovery of up to three but not less than two times actual damages...."

II. MASSACHUSETTS LAW OF CRIMES AGAINST THE ELDERLY AND DISABLED

The Court failed to take any action in enforcing Massachusetts Law of Crimes Against the Elderly and Disabled although larceny was committed by the respondents upon the petitiioner who is elderly and partial disabled.

III. THE UNITED STATES CONSTITUTION FOURTEEN AMENDMENT MUST BE PROTECTED

The court did not protected the Fourteen Amendment when it denied the petitioner equal protection of the law. Petitioner had the Constitution Right to have the Law of Crimes against the Elderly and Disable enforced.

IV. SUMMARY JUDGMENT WAS NOT APPROPRIATE

There are genuine and material issues and evidence to require a jury to resolve the par-

ties versions of the truth at time of trial.

The evidence must be examined in the light most favorable to the plaintiff Leclair v. SILBERLINE Mfg. 379 Mass. 21 at 23 (1979) In reviewing a motion for Summary Judgment a court must consider the pleadings related documents, evidence and all reasonable inferences in a manner most favorable to the non-moving party. Adickes v. S.H. Kress & Co. 398 U.S. 144, 90 S. Ct 1598, 26 L. Ed 2d 142 (1970), Smith v. Hudson 600 F. 2d 60 (6th Cir. 1979). Haines V. Kerner 404 U.S. 519 the court should be lenient when Pro Se.

V. THE PUBLIC INTEREST IS INVOLVED

The public interest is involved as this case will be used as a precedent. All contracts/releases with special emphasis on releases signed by the public, whereby they would not get paid for injuries, etc. The bottom line is that the complete country would be a disaster. All contracts/releases would not be enforceable in the Courts.

CONCLUSION

WHEREFORE, Petitioner Fred Davis respectfully prays that this Honorable Court grant

this petition and issue a writ of certiorari to review the facts as set forth in the foregoing and grant the order that the petitioner be paid the sum of $20,000.00 (twenty thousand) dollars, plus interest, legal fees, court costs, enforcement of the Massachusetts Law Crimes Against the the Elderly and Disabled and triple damages, or as an alternative remand action to the Court for trial by jury and any other relief the Court deems appropriate.

Respectfully submitted,

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